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September 7, 2023

**VIA ECF**

Honorable Taryn A. Merkl, U.S.M.J.  
United States District Court Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York, 11201

RE: Star Auto Sales, et al. v. Voynow, et al.  
Docket No.: USDC of Eastern NY No. 1:18-cv-05775-ERK-CLP  
Our File No.: 03127.01373

Dear Judge Merkl:

This firm represents the Defendants Voynow, Bayard, Whyte and Co., LLP, Randy Franzen, Hugh Whyte and Bob Seibel in this matter. We are submitting this correspondence in conjunction with counsel for the Plaintiffs pursuant to the Court's August 2, 2023 Order regarding the status of completion of fact discovery.

Defendants submit that pursuant to this Court's August 2, 2023 Order which stated that "Fact discovery shall be completed by August 31, 2023," fact discovery is now complete with the exception of the following issues pending before Your Honor. Specifically, Defendants served a third party subpoena upon Withum on August 7, 2023 with a return date of August 21, 2023. Plaintiffs thereafter moved to quash this subpoena. This matter is fully briefed and pending before Your Honor. (See ECF No. 108 Joint Submission dated August 21, 2023). In the August 21, 2023 joint submission, Plaintiffs also moved to preclude certain evidence and that is likewise fully briefed.

Aside from these pending matters, Defendants represent that all other fact discovery is complete.

In addition to the discovery issues pending before the Court described above, Plaintiffs contend that there are two (2) additional discovery disputes raised by Plaintiffs with the Court in the parties' joint submission filed on June 7, 2023 (ECF No. 102) that remain unresolved. Those two (2) issues are:

- Star's Second Request for Documents; Demand No. 9: A sample of documents (i.e. different time periods and different services) concerning Defendants' retainers or engagement letter with other automobile dealers involving services other than tax work since January 2010 (See ECF No. 102, at 2-4); and

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- Star's Fourth Request for Documents; Demand No. 6: All Documents Concerning checklists Voynow used regarding review engagements for automobile dealership clients as referenced in David Kumor's deposition (See ECF No. 102, at 4-5).

Defendants contend that this first issue is moot and resolved as Defendant produced sample engagement letters regarding other dealership clients to Plaintiffs on or about June 20, 2023. Plaintiffs disagree. As explained at ECF No. 102, at 2-4, during meet and confers, Plaintiffs requested that Defendants produce engagement letters for 2014-2015 for three (3) different dealership groups that had a tax engagement and three (3) that had a review engagement. Plaintiff also requested that one of the dealership groups include Thompson Auto Group (ECF Doc. No. 102-4), but Defendants merely produced engagement letters from Thompson and no other automotive groups. Plaintiffs request that the Court Order Defendants to produce tax and review engagement letters for two (2) other dealership groups to be chosen by Plaintiffs.

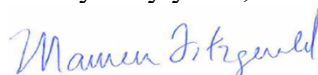
As to the second issue, Defendants set forth their opposition to this request in the June 7, 2023 joint submission (ECF No. 102).

As stated in the parties August 21, 2023 joint submission (ECF Doc. No. 108), Plaintiffs disagree with Defendants' position that all fact discovery was extended to August 31, 2023 because the March 28, 2023 Order clearly indicated that fact discovery closed on March 17, 2023 except for a few limited issues. The August 2, 2023 Order set a deadline of August 31, 2023, to complete the few outstanding discovery issues and did not reopen full-blown discovery in the case. Plaintiffs refer the Court to ECF Doc. No. 108 for their full position on this issue.

Aside from these pending matters raised by both parties, Plaintiffs represent that all other fact discovery is complete.

Thank you for your consideration of this matter.

Very truly yours,



Maureen P. Fitzgerald

MPF:ls

cc: All counsel of record